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Date: October 14, 2009 Name: Miyoung Shin Signature: /Miyoung Shin/

Our Case No. 10022/578

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Oyvind Stromme)	
)	Examiner: Con P. Tran
Serial No.: 10/614,764)	
)	Group Art Unit: 2614
Filed: July 7, 2003)	
)	
Patent No.: 7,599,502)	Confirmation No. 8000
)	
Issued: Oct. 6, 2009)	
)	
)	
For: SOUND CONTROL INSTALLATION)	

REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT
PURSUANT TO 37 C.F.R. § 1.705(d)

Mail Stop Patent Ext
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

U.S. Patent No. 7,599,502 (“the ‘502 patent”) issued on October 6, 2009. Pursuant to 35 U.S.C. § 154(b), the United States Patent and Trademark Office (“PTO”) calculated a patent term adjustment of 1180 days. A copy of the issue notification for the ‘502 patent is included herewith as Exhibit A.

Assignee believes that the patent term adjustment should be 1848 days. For the reasons stated herein, Assignee respectfully requests reconsideration of this patent term adjustment

pursuant to 37 C.F.R. 1.705(d). Please charge the petition fee pursuant to 37 C.F.R. § 1.18(e) to Deposit Account No. 23-1925. Please charge any additional fee required or credit for any excess fee paid to Deposit Account No. 23-1925.

The PTO calculated the patent term adjustment for the '502 patent based on activities and associated dates detailed in the Patent Application Information Retrieval (PAIR) system Patent Term Adjustment History, attached as Exhibit B. Assignee believes that errors and/or omissions in the calculation have resulted in an incorrect patent term adjustment for the '502 patent as described in detail below. Pursuant to 37 C.F.R. § 1.705(d), Assignee files this request for reconsideration within two months of the issue date of the '502 patent. Note that the '502 patent is not subject to a terminal disclaimer.

Period of adjustment pursuant to 37 C.F.R. § 1.703(b)

The period of adjustment pursuant to 37 C.F.R. § 1.703(b) is the number of days in the period beginning on the day ("the 3 year date") after three years of the actual filing date.

The PTO calculated the period of adjustment for the present application as 1180 days (i.e., 1187 – 7). However, that period of adjustment does not take into consideration the additional adjustment due under the 3 year provision of 37 C.F.R. § 1.702(b). *See Wyeth et al. v. Dudas*, 88 USPQ 2d 1538, 1541 (D.D.C. 2008) (Exhibit D).

The present application was filed on July 7, 2003 as evidenced by the official filing receipt attached as Exhibit C. The 3 year date determined pursuant to 37 C.F.R. § 1.703(b) is July 7, 2006. The PTO issued the '502 patent on October 6, 2009. Assignee respectfully submits that the non-overlapping period of adjustment beyond the 3 year date is 668 days, under 37 C.F.R. § 1.703(b).

In particular, there is a period of 1187 days between the 3 year date (July 7, 2006) and the issue date (October 6, 2009), but there also is overlap of 519 days with the 1187 day period. Under 37 C.F.R. § 1.702(b), the non-overlapping period of adjustment with respect to the 3 year provision is $1187 \text{ days} - 519 \text{ days} = 668 \text{ days}$. *See id.* The overlap of 519 days corresponds to (i) 440 days between the 3 year date (July 7, 2006) and the mailing date of the first Office Action (September 20, 2007) and (ii) 79 days that the PTO awarded as failure to issue a patent within three years of the actual filing date of the application. Accordingly, Assignee respectfully requests that the PTO correct the patent term adjustment to include the additional 668 days of non-overlapping adjustment.

Total patent term adjustment

For the present application, the total patent term adjustment pursuant to 37 C.F.R. § 1.703(f) is the period of adjustment pursuant to 37 C.F.R. § 1.703 reduced by any delay pursuant to 37 C.F.R. § 1.704. Thus, Assignee submits that the patent term adjustment should be $1180 \text{ days} + 668 \text{ days} = 1848 \text{ days}$, instead of the 1180 days indicated on the issue notification.

Assignee respectfully asserts that the patent term adjustment determined by the U.S. Patent and Trademark Office for the '502 patent is not correct. Accordingly, Assignee respectfully requests the PTO to reconsider the patent term adjustment, and make the above-explained revision to the patent term adjustment and corresponding changes the PAIR system Patent Term Adjustment History in view of the previous remarks. Office personnel are invited to contact Assignee via telephone if such communication would be beneficial in fulfilling this request.

Patent No. 7,599,502
Serial No. 10/614,764

Date Issued: Oct. 6, 2009
Date Filed: July 7, 2003

Respectfully submitted,

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